Dated: October 05, 2006

Lawrence S. Walter
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

In re: AMCAST INDUSTRIAL CORP., ET AL.,	Case No. 04-40504 (Jointly Administered)
Debtors	Judge L. S. Walter Chapter 11

DECISION OF THE COURT:

1) DETERMINING THAT THE INSURANCE POLICIES BENEFITTING THE RENFROES ARE NOT PROTECTED UNDER 11 U.S.C. § 1114; AND

2) GRANTING THE MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING REJECTION OF LIFE INSURANCE POLICIES WITH NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY AND BOSTON MUTUAL LIFE INSURANCE COMPANY AND CONSULTATION AND SETTLEMENT AGREEMENT WITH DELWIN D. RENFROE.

MATTER BEFORE THE COURT

This matter is before the court on the Motion of Debtors for an Order Authorizing Rejection of Life Insurance Policies with Northwestern Mutual Life Insurance Company and Boston Mutual Life Insurance Company and Consultation and Settlement Agreement with

Delwin D. Renfroe [Doc. 350], the Objection filed by Delwin and Leona Renfroe [Doc. 447], and the Reply [Doc. 465]. The parties filed various related documents prior to the hearing held on September 28, 2005 including a joint Stipulation of Facts [Doc. 1048]. Following the hearing, the parties filed documents to brief the issue of Mr. Renfroe's income in the year prior to the bankruptcy filing [Docs. 1080 and 1095]. The court has reviewed the filings of the parties, the Stipulation of Facts, the exhibits entered into evidence at the hearing and the testimony of the witnesses. As more fully set forth below, the court has determined that § 1114 of the Bankruptcy Code does not apply under the facts of this case to protect the benefits provided to Mr. Renfroe by Amcast and, consequently, Amcast may reject the agreements and policies underlying those benefits.

FACTUAL AND PROCEDURAL BACKGROUND

A. Generally

This matter arises from the various agreements, judgment and settlements involving Delwin Renfroe ("Renfroe") and Amcast Industrial Corporation ("Amcast") as part of Amcast's purchase of Lee Brass Company prior to filing for bankruptcy protection. At the time of the purchase in April of 1998, Renfroe was the chief executive officer of Lee Brass Company ("Lee Brass") and principal shareholder of LBC Group Corp. which owned 95.16% of the shares of Lee Brass. [Doc. 1048 ("Stip. of Facts"), ¶ 1.] As part of the purchase, Renfroe sold his Lee Brass stock to Amcast and resigned as CEO, but also entered a Consulting and Noncompetition Agreement ("Consulting Agreement") with Lee Brass/Amcast. [Stip. of Facts, ¶ 3; Joint Ex. II.] Pursuant to the terms of the Consulting Agreement, Amcast was to pay premiums for life and health insurance policies covering Renfroe and his wife Leona for the remainder of their lives. [Joint Ex. II, ¶ 3(b).] Following its bankruptcy filing on November 30, 2004, Amcast filed a

motion to terminate its continued obligation to pay those premiums and the Renfroes objected under 11 U.S.C. § 1114.

B. Stock Purchase Agreement

On March 26, 1998, Amcast entered a Stock Purchase Agreement ("SPA") with Renfroe and the other shareholders of LBC Group Corp. [Stip. of Facts, ¶ 2; Joint Ex. I.] Pursuant to the SPA, Amcast purchased all shares of Lee Brass owned by LBC Group Corp. including those owned by Renfroe. [Stip. of Facts, ¶ 2; Joint Ex. I.] Renfroe received approximately $6,500,000.00 in 1998 for the sale of his shares. [Transcript from September 28, 2005 hearing ("Tr.") p. 45.]

Renfroe's primary motivation for selling his shares in Lee Brass to Amcast and resigning as CEO was his health. [Tr. pp. 36, 45-46.] At the time of the purchase, Renfroe was 59 years old and had recently discovered that he would need a fourth heart bypass surgery. [Tr. pp. 36-37, 45-46.]

C. Consulting Agreement and Benefits Provided to Renfroe

The SPA required that Lee Brass and Renfroe enter a Consulting Agreement. [Stip. of Facts, ¶ 3; Joint Ex. 1, § 11.04.] Pursuant to the terms of the Consulting Agreement, Renfroe agreed to consult with and assist Lee Brass in the transition of management and the marketing and sale of Lee Brass products during a period starting on the Acquisition Date and ending on April 9, 2001. [Joint Ex. II, ¶¶ 1 and 2.] No particular number of days or hours were required and it was understood that such services would be provided as Renfroe's health permitted.[1] [Stip. of Facts, ¶ 21, Joint Ex. II, ¶ 1.] In exchange, Lee Brass was to provide Renfroe with monetary compensation and certain benefits. [Joint Ex. II, ¶ 3.] These obligations of Lee Brass were guaranteed by Amcast. [Stip. of Facts, ¶ 4.]

[1] Renfroe testified that Lee Brass never called on him to provide any consulting services he contracted to give and he has not been employed since he left Lee Brass. [Tr. p. 38.]

As compensation for his consulting services, Renfroe was to receive a consulting fee of $175,000 per year. [Joint Ex. II, ¶ 3(a) and (c).] The agreement also provided non-monetary benefits to Renfroe as compensation for his consulting services. [Joint Ex. II, ¶ 3.] Specifically, Renfroe was to be provided:

> (i) Medical Insurance under the Amcast Healthbuilder for Consultant [Renfroe] and his spouse, Leona S. Renfroe, until they reach Medicare eligibility at which time Amcast shall provide the reasonable cost of Medicare supplemental insurance for the lives of Consultant and his spouse, Leona S. Renfroe.
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> (ii) Life insurance for Consultant and his spouse, Leona S. Renfroe, as currently provided by Lee Brass to Consultant and his spouse, during the lives of Consultant and his spouse, Leona S. Renfroe.
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[Joint Ex. II, ¶ 3(b)(i) and (ii), (c).] The compensation and benefits provided to Renfroe within the Consulting Agreement were to be in full payment of his consulting services and "in lieu of participation in any other benefit programs that Lee Brass or Amcast may maintain." [Joint Ex. II, ¶ 3(c).]

To comply with the terms of the Consulting Agreement, Amcast paid the premiums for life and health insurance policies for the Renfroes. Specifically, Amcast paid premiums to Boston Mutual Life Insurance Company ("Boston Mutual") under a group policy for a life insurance benefit for Renfroe in the amount of $600,000 and for Leona Renfroe in the amount of $50,000. [Stip. of Facts, ¶ 16.] Boston Mutual terminated the group policy on August 1, 2005 at which time the Renfroes converted their coverage ($600,000 and $50,000) to individual policies with Boston Mutual. [Stip. of Facts, ¶¶ 17 - 19.] Amcast paid the premiums on these individual policies for the period of September 1, 2005 through November 30, 2005 to comply with the terms of the Consulting Agreement. [Stip. of Facts, ¶ 19.]

Amcast further maintained a Northwestern Mutual Life Insurance policy covering Renfroe. [Tr. p. 17; Amcast Ex. C.] The face amount of the coverage was $300,000 and the named beneficiaries were Lee Brass Company and designees of Renfroe. [Amcast Ex. C.]

In addition to the life insurance policies, Amcast was obligated to pay for medical insurance coverage for the Renfroes. [Joint Ex. II, ¶ 3(b)(i).] Initially, Amcast paid for health insurance for Renfroe including prescriptions. [Tr. p. 38.] At some point after Renfroe began receiving Medicare, Amcast paid the premiums for supplemental medical insurance acquired by Renfroe and reimbursed Renfroe for his medications. [Tr. pp. 20, 31-33, 38-39, 53-54.] Amcast also paid for supplemental insurance for Renfroe's wife and reimbursement of her prescriptions. [Tr. pp. 41, 53.]

At the hearing, Renfroe testified as to his negotiations with Amcast regarding the purchase of his Lee Brass stock and the importance of the benefits he was to receive pursuant to the terms of the Consulting Agreement. Renfroe stated that he demanded the health and life insurance provisions in the Consulting Agreement because of his poor health and because he was worried about his family. [Tr. p. 37.] He felt that he could not afford life and health insurance any other way, and, because he was 59 years old, he was not yet able to receive Medicare.[2] [*Id.*] Renfroe further testified that he would not have sold his shares in Lee Brass without Amcast's agreement to provide life and health insurance. [*Id.*] Renfroe testified that he considered the health and life insurance benefits owed by Amcast under the Consulting Agreement to be retiree benefits. [Tr. p. 55.]

[2] At the time of or immediately following the sale of Lee Brass, Renfroe applied for and received Social Security disability benefits and other disability benefits under a policy with Lee Brass. [Tr. p. 37.] His disabled status began on April 9, 1998, the date that he left Lee Brass. [*Id.*]

D. Renfroe's Judgment Against Amcast and Subsequent Settlement Agreement

In 2002, Renfroe commenced litigation in Alabama against Amcast and Lee Brass Company to recover amounts due to him under the Consulting Agreement that Amcast and Lee Brass had not paid. [Stip. of Facts, ¶ 5.] On March 19, 2003, the Alabama court entered a judgment in favor of Renfroe and against Lee Brass Company ("Judgment") for monetary damages and specific performance. [Stip. of Facts, ¶ 6, Joint Ex. III, Recitals.]

Following the entry of the Judgment, Lee Brass Company, Amcast and Renfroe entered into a settlement agreement dated February 12, 2004 resolving the state court litigation ("Renfroe Settlement Agreement"). [Stip. of Facts, ¶ 7; Joint Ex. III.] Under the terms of the Renfroe Settlement Agreement, Amcast and Lee Brass Company were to pay Renfroe the total amount of $340,586 as follows:

a. Amcast and Lee Brass Company were to instruct the clerk of the State Court to release to Renfroe their cash bond of $260,916.45.

b. Lee Brass was to pay, via wire transfer, the balance of $79,669.55 to Renfroe within 2 days of the release of the cash bond.

[Stip. of Facts, ¶ 8 (a) and (b); Joint Ex. III, ¶ 1.]

The Renfroe Settlement Agreement further provided that the provisions of the Judgment awarding future specific performance of the Consulting Agreement were to remain in full force and effect. [Stip. of Facts, ¶ 9; Joint Ex. III, ¶¶ 2, 7.] The Renfroe Settlement Agreement required Lee Brass/Amcast to continue reimbursing Renfroe and his spouse for supplemental medical insurance and medications [Joint Ex. III, ¶ 3] and to continue paying the premiums for the Northwestern Life Insurance Policy and Boston Mutual Life Insurance Policy for Renfroe and his wife [Joint Ex. III, ¶ 4]. Lee Brass / Amcast's obligation to provide Renfroe and his wife with these life and health insurance benefits was to be for the "remainder of their respective lives." [Joint Ex. III, ¶¶ 3-4.] In addition, the Renfroe Settlement Agreement named Renfroe's

spouse, Leona Renfroe, as third party beneficiary of the Consulting Agreement and the Renfroe Settlement Agreement. [Stip. of Facts, ¶ 9; Joint Ex. III, ¶ 9.]

Amcast and Lee Brass Company partially satisfied their obligations under the Renfroe Settlement Agreement by paying Renfroe the total sum of $340,586. [Stip. of Facts, ¶ 10.] Renfroe received the funds in February of 2004. [*Id.*] Renfroe testified that, although he received the funds in 2004, the obligation should have been paid by Amcast in 2001 since the obligation represented compensation due to Renfroe for a period ending April 9, 2001. [Tr. pp. 39-40.] Excluding these funds from his 2004 income, Renfroe testified that his gross income for 2004 would total less than $250,000. [Tr. p. 40.] Renfroe testified that his income for 2005 would total approximately $100,000. [Tr. pp. 40-41.]

On March 3, 2004, Renfroe filed a Notice of Partial Satisfaction of Judgment ("Notice") with the Alabama state court acknowledging receipt of the $340,586. [Stip. of Facts, ¶ 11; Joint Ex. IV.] The Notice further declared that the specific performance obligations after January 30, 2004 remained in full force and effect. [Stip. of Facts, ¶ 12; Joint Ex. IV.]

E. LBC Settlement Agreement

In February of 2004, Amcast, Lee Brass Company, Renfroe and the other shareholders of LBC Group Corp. entered into a settlement agreement ("LBC Settlement Agreement") to resolve a separate dispute arising under the SPA with regard to $487,000 still held in escrow. [Stip. of Facts, ¶ 13; Joint Ex. V; Tr. pp. 21-22.] Pursuant to the terms of the LBC Settlement Agreement, Amcast received $280,000 and Renfroe and the other shareholders of LBC Group Corp. received $207,483. [Stip. of Facts, ¶ 14; Joint Ex. V.] In February of 2004, Renfroe received $147,506 of the $207,463 disbursed to the LBC shareholders. [Stip. of Facts, ¶ 15.]

F. Judgment Lien and Liens of Secured Lenders

Amcast's pre-petition lenders have a valid and enforceable security or mortgage interest in all of Amcast's personal and real property located in the state of Alabama. [Stip. of Facts, ¶ 20.] The lenders' liens, perfected in March of 2003 prior to the state court judgment rendered in favor of Renfroe, covers all property to which a judgment lien filed by Renfroe could attach except the cash surrender value of the insurance policy.[3] [*Id.*]

LEGAL ANALYSIS

The issue presented to the court is whether the Bankruptcy Code, and specifically 11 U.S.C. § 1114, prevents Amcast from rejecting life and health insurance policies benefiting the Renfroes and terminating its ongoing obligation to provide these benefits.

Bankruptcy Code Section 1114 was enacted to protect the interests of retirees of Chapter 11 debtors and ensure that bankrupt employers did not renege on retirement obligations to their employees. *General DataComm Indus., Inc. v. Arcara (In re General DataComm Indus., Inc.)*, 407 F.3d 616, 620 (3rd Cir. 2005); *In re Certified Air Technologies, Inc.*, 300 B.R. 355, 370 (Bankr. C.D. Cal. 2003); *In re Farmland Indus., Inc.*, 294 B.R. 903, 918-19 (Bankr. W.D. Mo. 2003). Section 1114,[4] entitled "Payment of Insurance Benefits to Retired Employees" protects "retiree benefits" defined as:

> . . . payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.

[3] At the September 28, 2005 hearing, the parties agreed to strike a portion of paragraph 20 from the Stipulation of Facts with respect to whether or not the lenders' liens attach to the cash surrender value of the Northwestern Policy. The parties further agreed to amend the stipulation after they investigated the liens. According to the court's review of the docket, the parties never filed an amendment and, consequently, the court is unable to resolve the issue.

[4] Bankruptcy Code Section 1114 has been modified by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8. However, this case was filed prior to the new law's enactment, and, consequently, the BAPCPA modifications do not apply to this matter. Consequently, all references to and quotations from § 1114 cited in this decision are from the section as written prior to the enactment of BAPCPA.

11 U.S.C. § 1114(a). If a benefit plan, fund or program meets this definition, a debtor-in-possession or trustee cannot modify or terminate the benefits absent good faith negotiations followed by court approval or an agreement to the termination / modifications from an "authorized representative" of the retirees. 11 U.S.C. § 1114(e) – (g). *See also Certified Air Technologies*, 300 B.R. at 370.

In this case, Amcast does not attempt to conduct the negotiations and other actions required to terminate or modify retiree benefits under § 1114. Instead, Amcast argues that § 1114 and its requirements are inapplicable. Amcast asserts that the insurance policies purchased to benefit the Renfroes were a term of the stock purchase and consulting agreements and were not retiree benefits under a plan, fund, or program maintained or established by Amcast.

Amcast correctly notes that the language of § 1114 protects retirement benefits provided under a "plan, fund or program" maintained or established by a debtor. 11 U.S.C. § 1114(a). This language suggests that Congress had in mind the protection of large scale plans and programs administered by an employer specifically to provide retirement benefits for groups of covered employees rather than a contractual obligation in a non-retirement agreement with one individual.[5] Nonetheless, the phrase "plan, fund or program" is left undefined within the Bankruptcy Code and its application to terms in a non-retirement agreement with one individual remains unclear. For this reason, courts have used the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, as a reference because this federal legislation also

[5] Other provisions of § 1114 further support that Congress intended to protect programs covering groups of retired employees rather than contracts with individual employees. Specifically, § 1114(b), (c) (d) discuss the appointment of an "authorized representative" to negotiate on behalf of and generally represent the interests of retirees under a benefit plan that a debtor-in-possession is attempting to terminate. Because the appointment of an authorized representative of the retirees is required in all cases (*see* § 1114(d)), it appears that the types of plans or programs intended to be protected under § 1114 are those covering a large group of retirees rather than an agreement with one single individual like Renfroe for which the appointment of a representative seems unnecessary.

protects retirement benefits and utilizes the same phraseology. *In re New York Trap Rock Corp.*, 126 B.R. 19, 22 (Bankr. S.D.N.Y. 1991).

Specifically, the definitional section of ERISA defining an "employee welfare benefit plan" describes a "plan fund or program" as follows:

> The terms "employee welfare benefit plan" and "welfare plan" mean any *plan, fund, or program* which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such *plan, fund, or program* was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

29 U.S.C. § 1002(1) (emphasis added).

Whether an employer's obligation is a plan fund or program within this ERISA provision depends upon the surrounding circumstances of each case. *New York Trap Rock Corp.*, 126 B.R. at 22. To make this determination, courts have considered, among other factors, the central purpose of the arrangement. *See Roderick v. Mazzetti & Assocs., Inc.*, 2004 WL 2554453, at **8-10 (N.D. Cal. Nov. 9, 2004). Utilizing this analysis, an employer's obligation arises from an ERISA protected "plan, fund or program" when the arrangement is specifically designed for the purpose of paying retirement income or providing retirement benefits to employees. *Williams v. Wright*, 927 F.2d 1540, 1546 (11th Cir. 1991); *Fraver v. North Carolina Farm Bureau Mutual Life Ins. Co.*, 801 F.2d 675, 678 (4th Cir. 1986). When the benefits are not part of an arrangement specifically designed for retirement, but are, instead, incidental to an individual stock purchase agreement, buy-out contract, or other non-retirement agreement, courts have found that the employer's obligation to provide such benefits is not part of a "plan, fund or program" protected by ERISA. *Williams*, 927 F.2d at 1546-47 (noting that the analysis focuses on whether the arrangement was designed primarily for the purpose of providing retirement

income or whether the payment of post-retirement income is incidental to a contract of current employment); *Fraver,* 801 F.2d at 678 (concluding that post-termination compensation provided to an agent as part of his buy-out or employment contract did not constitute the type of retirement benefits under a "plan, fund or program" protected by ERISA); *Roderick*, 2004 WL 2554453, at **8-10 (determining that post-retirement payments from a stock purchase agreement, even when the employee intends those payments as retirement, are not protected by ERISA if the central purpose of the agreement was transferring ownership of the company rather than providing retirement security); *Laverty v. Savoy Indus., Inc.*, 954 F.Supp. 86, 89-90 (S.D.N.Y. 1997) (holding that benefits, including insurance, promised as part of an employment and consulting agreement did not create an ERISA protected "employment welfare plan" when all benefits were part of the consultant's present compensation arrangement and the agreement set up no administration of plan funds nor required the employer to contribute to a fund as a source of accrued benefits).

In this case, Amcast's agreement to provide health and life insurance benefits to the Renfroes was not part of a standard retirement "plan, fund or program" as the term is used in § 1114. Instead, Amcast's agreement to pay these benefits was couched within terms of the Consulting Agreement and related SPA with Delwin Renfroe. Pursuant to these agreements, Renfro sold his stock, resigned as CEO and agreed to provide consulting services. [Joint Exs. I and II.] In exchange, Amcast/Lee Brass paid Renfroe $6,500,000 for the stock, gave him a yearly consulting fee of $175,000 and provided life and health insurance policies "for the lives" of the Renfroes. [*Id.*] The consulting fees and benefits, including the health and life insurance polices, were provided to Renfroe "in lieu of participation in any other benefit programs that Lee Brass or Amcast may maintain." [Joint Ex. II, ¶ 3(c).]

The central purpose of these agreements was to transfer ownership and control of the company and provide for consulting services to the company and revenue to Delwin Renfroe following his resignation as CEO. The life and health insurance policies were an incidental part of this package and, in fact, nowhere within the SPA or the Consulting Agreement do the parties use the word "retirement" in connection with the benefits provided to the Renfroes.[6] [Joint Exs. I and II.] The court concludes that Amcast's obligation to provide life and health insurance benefits to the Renfroes is not part of a "plan, fund or program" established or maintained by Amcast. Consequently, the insurance policies are not protected pursuant to 11 U.S.C. § 1114.[7]

CONCLUSION

Because Amcast's obligation to pay life and health insurance premiums for the Renfroes was not established as part of a "plan, fund or program," but instead was an incidental term to stock purchase and consulting agreements, the court concludes that the benefits are not protected

[6] Following Amcast / Lee Brass's default on its obligations to the Renfroes, the Renfroes sued Amcast / Lee Brass and obtained a judgment against Amcast / Lee Brass requiring the continuation of insurance benefits. After the judgment was entered, Lee Brass, Amcast and the Renfroes further entered a settlement agreement continuing the Renfroe's insurance benefits "for the remainder of their respective lives." [Joint Ex. III.] None of these documents refer to the insurance policies as "retirement benefits" for the Renfroes.

[7] As an alternative argument, Amcast maintained that Delwin Renfroe's income in the year prior to the bankruptcy was too high for his benefits to receive § 1114 protection. Relevant to this argument is § 1114(l) which states:

> **(l)** This section shall not apply to any retiree, or the spouse or dependents of such retiree, if such retiree's gross income for the twelve months preceding the filing of the bankruptcy petition equals or exceeds $250,000, unless such retiree can demonstrate to the satisfaction of the court that he is unable to obtain health, medical, life, and disability coverage for himself, his spouse, and his dependents who would otherwise be covered by the employer's insurance plan, comparable to the coverage provided by the employer on the day before the filing of a petition under this title.

11 U.S.C. § 1114. Amcast argues that because Delwin Renfroe received his settlement award totaling $340,586 in February of 2004, Renfroe's income in the year prior to Amcast's bankruptcy filing was higher than $250,000. Consequently, Amcast asserts that Renfroe's benefits are not protected under the statute. The Renfroes oppose this argument noting that the settlement award to Delwin Renfroe was related to an obligation that Amcast should have paid in 2001. Excluding the settlement funds from his 2004 income, Renfroe testified that his gross income for 2004 would total less than $250,000.

Because the court concludes that Renfroe's insurance benefits are not protected by § 1114 for the other reasons stated in this decision, the court need not reach the issue of Renfroe's income level in the year prior to the bankruptcy filing. However, the court certainly questions whether a debtor should be able use the date of paying a settlement award related to a much earlier obligation in order to eliminate a former employee's benefit protections under § 1114.

by 11 U.S.C. § 1114. Consequently, Amcast may reject and terminate the life and health insurance policies benefiting the Renfroes under 11 U.S.C. § 365(a) as well as remaining obligations under the settlement agreement.[8]

SO ORDERED.

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[8] Section 365(a) of the Bankruptcy Code states: **"**Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The parties appear to agree that the life and health insurance policies at issue are executory contracts and no party argues that any exception to the application of § 365(a) applies in this case.

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